

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Michael A. Dunn,

Plaintiff,

v.

Jo Anne B. Barnhart,
Commissioner of Social Security,

Defendant.

No. CV 04-444 TUC-JMR

ORDER

This case arises from a claim by Plaintiff for Social Security benefits. The Honorable Peter J. Baum ("ALJ") determined that Plaintiff was not disabled as defined by the Social Security Act. Plaintiff's request for review of the ALJ's decision was denied by the Appeals Council. Plaintiff next filed an action in this Court challenging the ALJ's finding. Upon stipulation, the Court remanded the matter for further consideration. Upon remand, a hearing was held on October 8, 2003 before ALJ Baum. On January 26, 2004, ALJ Baum denied Plaintiff's claim. Appeals Council again denied review and, thereafter, Plaintiff initiated this action.

Pending before this Court are cross-motions for summary judgment disputing whether the ALJ's decision was supported by substantial evidence. Plaintiff contends that the ALJ erred by failing to provide adequate reasons for rejecting the opinion of Plaintiff's treating physician.

On April 13, 2006, after a thorough and well-documented analysis, Magistrate Judge Hector C. Estrada issued a Report and Recommendation (R & R) to this Court. Neither party filed an objection to the R & R. The Magistrate Judge recommended that Plaintiff's motion be granted, Defendant's motion be denied, and that Plaintiff's claim be remanded for an award of benefits.

In his analysis, the Magistrate Judge determined that the final decision of the Commissioner is not supported by substantial evidence. Specifically, the Magistrate Judge concluded that the ALJ failed to give legitimate reasons for discrediting the opinion of Plaintiff's examining physician, Dr. Kristin Lorenz.

If there are no objections to the R & R, the Court will modify or set aside only those portions that are clearly erroneous or contrary to law. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998). The Court has carefully reviewed the entire record and concludes that Magistrate Judge Estrada's recommendations are not clearly erroneous or contrary to law. The Court agrees that the ALJ's decision is not supported by substantial evidence and that justice would be served by remanding this action for an immediate award of benefits.

Accordingly,

IT IS ORDERED that the **REPORT AND RECOMMENDATION** of the Magistrate Judge filed **April 13, 2006**, is **ADOPTED**.

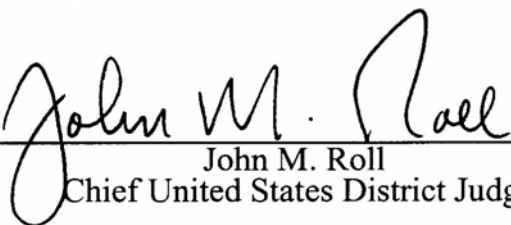
IT IS FURTHER ORDERED that Plaintiff's motion for summary judgment is

GRANTED.

IT IS FURTHER ORDERED that Defendant's cross-motion for summary judgment is **DENIED**

IT IS FURTHER ORDERED that the instant action is **REMANDED TO THE COMMISSIONER** for an immediate award of benefits.

DATED this 26th day of June, 2006.



John M. Roll
Chief United States District Judge